

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

Implementation of Section 9  
of the Communications Act

MD Docket No. 94-19

Assessment and Collection of  
Regulatory Fees for the 1994  
Fiscal Year

RECEIVED

APR 7 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

COMMENTS OF CONTINENTAL CABLEVISION, INC.

Continental Cablevision, Inc. ("Continental"), by its attorneys, hereby submits these comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the captioned proceeding. Continental is the third largest multiple system operator in the United States and serves nearly 3 million basic subscribers across the United States.

Introduction and Summary

Continental's comments are limited to one important issue that was not clarified in the Commission's NPRM in this proceeding. Continental believes that the Commission's regulatory fees are, in fact, franchise fees and should be fully recovered from subscribers.

025

## I. THE REGULATORY FEE IS AKIN TO A FRANCHISE FEE

The Omnibus Budget Reconciliation Act of 1993 (the "1993 Budget Act") added a new Section 9 to the Communications Act of 1934.<sup>1</sup> Section 9(a) authorizes the Commission to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement activities, policy and rulemaking activities, user information services, and international activities. The fees purportedly are derived by determining the full-time equivalent number of FCC employees performing the specified regulatory activities, "adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities. . . ." 47 U.S.C. §159(b)(1)(A) (1993). Specifically, for fiscal year 1994, each cable television system is to be assessed an annual regulatory fee of \$370.00 per 1,000 subscribers or any portion thereof. 47 U.S.C. §159(g) (1993); NPRM at ¶75. These new fees will be collected on top of the filing fees paid by cable companies when they apply for various FCC authorizations and will be placed in a special FCC account that the Commission may draw upon to fund activities related to its regulation of cable television.

Congress authorized the Commission to levy regulatory fees (also known as "user fees") because it seeks to make the Commission a self-funding agency. See Broadcasting & Cable, June 21, 1993, p. 18. The new fees will not increase the FCC's annual budget as Congress will reduce the Commission's annual appropriation by a corresponding amount. See FCC Report, August 11, 1993, p. 1. The inclusion of regulatory fees in the 1993 Budget Act

---

<sup>1</sup> Pub. L. No. 103-66, Title VI, §6003(a), 107 Stat. 397 (approved August 10, 1993). The new Section 9 of the Communications Act is codified at 47 U.S.C. §159.

was precipitated in large part by the substantial additional costs imposed on the Commission in implementing the 1992 Cable Act. Then-Chairman James H. Quello repeatedly informed Congress that the Commission would be unable to implement the 1992 Cable Act without supplementary funding. Id. Indeed, the Commission was forced to defer the effective date of its cable rate regulations based on budgetary constraints. Order, 8 FCC Rcd 4511 (1993). In response to criticism of the Commission's decision to delay implementation of its new rate regulations, Chairman Quello bluntly informed Congress that: "If we had user fees in place, all of this could have been avoided." Broadcasting & Cable, June 21, 1993, p. 18. The regulatory fee provision was placed in the budget package several weeks later. See Broadcasting & Cable, August 9, 1993, p. 6.

This annual regulatory fee is equivalent to a federal franchise fee. A franchise fee is a charge made by a local or state government to pay for the costs of regulation. See Cable Television Report and Order, 36 FCC 2d 143, 209, recon. denied, 36 FCC 2d 326 (1972), aff'd sub nom. ACLU v. FCC, 523 F.2d 1344 (9th Cir. 1975) ("We are seeking to strike a balance that permits the achievement of federal goals and at the same time allows adequate revenues to defray the costs of local regulation"); Clarification of the Cable Television Rules, 46 FCC 2d 176, 207, recon. denied, 49 FCC 2d 1078 (1974) ("franchise fee should be based on regulatory costs. It should not be used for revenue raising purposes.") The annual regulatory fee shares the very same purpose as a franchise fee, albeit on a federal level. It is a charge made by the federal government to cover the costs incurred by the FCC related to federal regulation of cable television systems.

## II. THE REGULATORY FEE SHOULD BE FULLY RECOVERED THROUGH SUBSCRIBERS

Since the annual regulatory fee is the federal equivalent of a franchise fee, the FCC should clarify that the fee may be passed through in full to subscribers. Because franchise fees are largely beyond the control of a cable operator, the Commission's rate regulations permit operators to pass through to subscribers franchise fees. Report and Order and Further Notice of Proposed Rulemaking, 8 FCC Rcd 5631 (1993) ("Rate Order") at ¶257.<sup>2</sup> Unlike other so-called "external" costs, an operator seeking to adjust capped rates to reflect changes in its franchise fees need not remove the fee from the total charge for the affected service tier because franchise fees were not included in the data on which the FCC's benchmark is based. Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 94-38 (released March 30, 1994) at ¶174. Regulatory fees represent a brand new scheme to fund federal regulation of cable systems. Regulatory fees obviously were not included in the FCC's benchmark because they previously did not exist. Because they serve the same purpose as franchise fees, albeit on a federal rather than a local level, regulatory fees should be afforded the same pass through treatment as franchise fees.

---

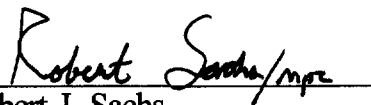
<sup>2</sup> This pass through provision comports with former Section 622(c) of the Cable Act, which provided for franchise fee pass throughs. 47 U.S.C. §542(c) (1992).

The fees collected represent a substantial new expense for the cable industry. In Continental's case, its base of 2,916,504 subscribers will require payment of \$1,079,105 in 1994.<sup>3</sup> That does not include payment for CARS, business, mobile radio or other FCC authorizations.

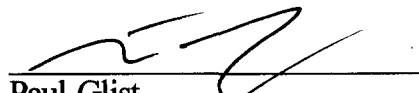
### Conclusion

For the foregoing reasons, Continental recommends that the Commission treat regulatory fees as an immediate franchise fee pass through item for rate regulation purposes.

Respectfully submitted,



Robert J. Sachs  
Margaret H. Sofio  
CONTINENTAL CABLEVISION, INC.  
The Pilot House  
Lewis Wharf  
Boston, MA 02110  
(617) 742-9500



Paul Glist  
Matthew P. Zinn  
COLE, RAYWID & BRAVERMAN  
1919 Pennsylvania Avenue, N.W.  
Suite 200  
Washington, D.C. 20006  
(202) 659-9750

April 7, 1994

---

<sup>3</sup> These figures are based on information accurate as of January 31, 1994.